

Policing in India: a Crisis of Confidence and Credibility

-The Right to Information and its Implications for the Police-

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It goes without saying that law and order is fundamental to the existence of a functioning democracy and a civilized society. The rule of law is the bedrock of a modern economy. As the instrument for maintaining the rule of law, an efficient, effective and accountable police administration is one of the most essential institutions of the state.

Dr Manmohan Singh, Prime Minister of India

1.0 Introduction

India is a country on the move. Momentum is gathering toward achieving the democratic principles enshrined in the Constitution, a democracy of “we, the people ...”. Recent initiatives from the Government have signaled political willingness to reform aspects of governance traditionally conducted behind the walls of secrecy and bureaucracy. There is an increasing recognition of the importance of access to information for strengthening the credibility and effectiveness of government institutions and more generally for enhancing democracy itself. Particularly with the Right to Information Act 2005 (RTI Act) coming into force recently, the current scene is set for redressing some of the past hurdles of engaging with government. Citizens now have a legal right to the sort of information that promotes an informed democracy and accountability within the halls of power.

Nowhere will the impact of this movement be felt more than in the Police of India. Indeed, the Prime Minister has indicated that the time has come for the Police to reform itself with transparency and accountability.²

Building such a culture, I believe, is one of the most important challenges that all police officers must address on a priority basis. We need to ensure that police forces at all levels, and even more so at the grassroots, change from a feudal force to a democratic service...

There is therefore a need to ensure honesty in our forces. There is a need to ensure transparency in our dealings, with our citizens and also within our own forces.

It is in this context that the RTI Act gains importance: its high potential to reform the administration of the Police, securing a right for every citizen to question and examine traditionally secret aspects of Police conduct. In the current absence of a new Police Act to replace the colonial 1861 Police Act, the RTI Act can achieve what has merely been talked about over recent years: the creation of a confident, credible Police that the community trusts.³ This not only opens up the Police to a higher level of public scrutiny,

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<http://www.humanrightsinitiative.org> (November, 2005).

² PM's address to Superintendents of Police Conference, September 1 2005, New Delhi, at <http://pmindia.nic.in/speech/content.asp?id=182>.

³ Although, it should be noted that there is currently an Expert Committee of eminent specialists, set up by the Home Ministry, in the process of redrafting the Police Act 1861. See PM's address to the Annual

but also promotes community participation in policing. The potential benefits of the RTI Act on the police-public interface should not be underestimated and nor should they be stymied through poor implementation of the obligations discussed below.

This paper aims to promote awareness of the right to information under the RTI Act, particularly as it relates to the Police and its interactions with the public. In this way, it can be used as a resource for both the public and police. The Police must be aware of the obligations under the RTI Act while the public must also know the law in order to vocalise and exercise their legal rights. This provides a foundation for promoting understanding, awareness, and dialogue between the Police and the public. The first section outlines the right to information as it is defined under the RTI Act; the second section examines the impact this will have on the Police; and the third section seeks to examine particular issues surrounding the RTI Act and the Police.

2.0 The Right to Information

The right to information in India does not exist in isolation. Rather, it is the culmination of a process that has occurred both internationally and at a grassroots level.

2.1 An Internationally Recognised Right

The right to information has long been recognised as crucial to the realisation of economic and social, as well as civil and political rights. The very first session of the United Nations General Assembly stated, “Freedom of information is a fundamental human right and ... the touch-stone of all the freedoms to which the United Nations is consecrated.”⁴ This was later enshrined in both the 1948 Universal Declaration of Human Rights (UDHR) and the 1966 International Covenant on Civil and Political Rights (ICCPR). Under Articles 19 of both instruments, the guarantee of freedom of opinion expression includes the freedom to “seek, receive and impart information ...”

This recognises the fact that citizens cannot exercise their human rights if there is no knowledge of those rights. Indeed, all other rights flow from the right to information. The right to information is therefore of vital importance in itself, for the fulfillment of other rights, and as underpinning a vibrant democracy. The United Nations Development Programme thus defines the right to information as “the human right to secure access to publicly held information and the corresponding duty upon a public body to make information available.”⁵

2.2 The right to information in the Supreme Court

The Supreme Court of India has consistently upheld the principle of a right to information. In the 1975 case of *State of Uttar Pradesh v Raj Narain*, the Court commented:⁶

Conference of DGPs / IGPs of States and UTs, October 6 2005, New Delhi, at <http://pmindia.nic.in/speech/content.asp?id=207>.

⁴ UN General Assembly (1946) Resolution 59(1), 65th Plenary Meeting, December 14.

⁵ UNDP - Bureau for Development Policy - Democratic Governance Group, *Right to Information: Practical Guidance Note* (July, 2004) 5.

⁶ AIR 1975 SC 865, per Mathews J. While this was partly a dissenting opinion, subsequent judgments have upheld this statement.

In a government of responsibility like ours where the agents of the public [including the Police] must be responsible for their conduct there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know every public transaction in all its bearings ... To cover with the veil of secrecy the common routine business, is not in the interest of the public ... The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption.

In the later 1981 case of *S. P. Gupta v Union of India*,⁷ the Court found that the right to know is implicit in the guarantee of freedom of speech and expression found in Article 19(1) of the Constitution: a person cannot have the freedom to express in the absence of knowledge. The right to information is therefore a constitutional right in India that has now been acknowledged and clarified in the recent RTI Act. This Act sets out the specifics of the right to information in India, clarifying the obligations of government and rights of citizens in seeking information. Importantly, it provides for access to information without requiring the intervention of the courts.

2.2 *The Right to Information under the RTI Act 2005*

The RTI Act came fully into force on 12th October 2005 and allows all citizens the right to information. Section 2 contains the important definitions:

- “Information” is defined as any material in any form including records, documents, memos, emails, opinions, advice, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, and data material held in any electronic form.
- The “right to information” (ie the right to have access to such information) is defined as the right to information accessible under the RTI Act which is held by or under the control of any public authority. This includes the right to:
 - Inspect work, documents, and records;
 - Take notes, extracts or certified copies of documents or records;
 - Taking certified samples of material; and
 - Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode. This may be obtained through printouts where such information is stored in a computer or any other device.

The right to information in India now has a statutory definition that is broad and generous in its terms. When taken with the exemptions discussed below, it is clear that the main purpose of this legislation is for public authorities, including the Police, to provide maximum disclosure of information with minimum exemptions. The bulk of the legislation is given to the details of the provision of this information both in terms of what information public authorities must proactively disclose to the public and what information the public has a right to access. The remainder of this paper focuses on these specific obligations and the process that involves as it applies to the Police.

⁷ (1981) Supp SCC 87.

3.0 The RTI Act and the Police

The RTI Act extends to all parts of India except the state of Jammu and Kashmir. The Police is specifically included in the RTI Act. It comes under the section 2 definition of “public authority”, which includes any authority or body or institution of self-government established or constituted by or under the Constitution. However, the 2nd Schedule to the Act excludes some 18 departments from the purview of the Act, including the Intelligence Bureau, Narcotics Control Bureau, National Security Guards, Assam Rifles, and the Special Service Bureau. It should be noted that this exclusion is not absolute and the organisations listed must provide information pertaining to allegations of corruption and human rights abuses.

3.1 Proactive Disclosure Requirements

The rationale provided for the proactive disclosure requirements is so that the public has minimum resort to using the Act to obtain information.⁸ All public authorities must maintain information in a manner that facilitates the right to information. In other words, seeking information from the Police under the RTI Act should be a last resort option for the ordinary citizen. This is perhaps the most important aspect of the RTI Act for the Police, as much of the information held by the Police has traditionally been kept from the public at large. The Police maintains significant amounts of information that fall under the proactive disclosure requirements. Under the RTI Act, the Police must publish:⁹

- **the particulars of its organisation, functions and duties:** The Police should therefore publish these particulars at each level of police functioning – from the Indian Police Service through to the individual police stations, outlining the roles of the differing organs of policing. This could be published as an organisational chart with the functions and duties of each division explained;
- **the powers and duties of its officers and employees:** Information such as the powers of the differing ranks of police from the Commissioners to the Constabulary can be included in a citizen’s charter for each department. While the functions and duties of police are already listed in legislation and police manuals, one aim of the RTI Act is to provide ease of access to information, and not all citizens know how to access Acts of Parliament let alone find the relevant information;
- **the procedure followed in the decision-making process, including channels of supervision and accountability:** This is an important requirement in terms of developing a culture of accountability within the police itself. The public now has a right to know “where the buck stops” and who is responsible for actions taken by the Police;
- **the norms set by it for the discharge of its functions:** a good example of the sorts of norms that the police should publish are the norms of arrest. For instance, the *DK Basu* Supreme Court decision conveniently sets out guidelines that govern arrest.¹⁰ Following this decision, these guidelines must be displayed prominently at each Police Station for the wider public. Under the RTI Act, the Police must similarly publish other information relating to its norms of conduct.

⁸ Right to Information Act 2005, s 4. This section contains the proactive disclosure provisions.

⁹ Right to Information Act 2005, s 4(1)(b).

¹⁰ *D.K. Basu v State of West Bengal* AIR 1997 SC 610. These guidelines are additional directives of the Supreme Court to the norms of arrest.

The more the public have knowledge of the norms of police conduct, the greater the understanding;

- **the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions:** this requirement is related to the previous and can be squarely met by the publication of the police manuals and made available to the general public. The public has a legal right to know the operating procedures of the police and the Police manuals are an important source of this information;
- **a statement of the categories of documents that are held by the Police or under its control:** the Police keep numerous diaries and registers that fall under this requirement. Much of the information regarding police registers is found in the state Police manuals, but again this information can be difficult to access. A concise statement of what information is held by the Police would meet this obligation. The question of whether and to what extent the information contained in these journals need be published is discussed below;
- **the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of police policy or its implementation:** there are some community policing initiatives happening across India. These initiatives should be widely publicised to ensure broad support and participation and help improve the police-public interface. For example, the Delhi Police have instituted Thana Level and District Level Committees in each Police Station and District respectively. They hold monthly meetings to promote interaction between the Police and public;
- **a directory of its officers and employees:** Generally, the Police should maintain a directory of its officers and employees. The public has a right to know who are acting in their interests and serving as their protectors;
- **the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations:** this information may be published as categories of police officers and their salary ranges;
- **the budget allocated to the Police and the particulars:** this information enables public accountability for Police funding and helps to prevent corruption within the Police. It also enables the public to scrutinize the priorities of the Police through analysis of its spending;
- **particulars of concessions, permits or authorisations granted by it:** the public have a right to know all permits *etc* issued by the Police. This again is a window into Police conduct and aids as a check on corruption;
- **details in respect of the information, available to or held by the Police, reduced in an electronic form:** many State Police Departments maintain websites. Websites are one form of publication able to be utilised by the Police and all State Police should be encouraged to do likewise. The Police must also publish what records in their possession are kept in electronic form;
- **particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use:** with respect to the Police, this may include dissemination of phone numbers, availability of staff, and information available at Police Stations; and
- **the names, designations and other particulars of the Public Information Officers (PIOs):** it is vital that the public are aware of whom to approach within the Police to access information. This information should be widely accessible as it is the PIOs who assist citizens in their requests for information.

Much of the administrative information under the proactive disclosure requirements, such as details of the Police organisation, its officers, budget and salaries, will be generated at the state level. Generally, such information will sensibly be published at the state level of the Police. However, there must be a distinction between publication and dissemination: the public must have easy access to this information. Therefore, information under the proactive disclosure requirements should be widely distributed, in particular to each police station, which is the primary locus of the police-public interface. The objective of proactive disclosure under the RTI Act is simply to publish and disseminate key information routinely in a manner and form that is easily accessible and understood by the public. The Police are therefore required to update these publications regularly to ensure the information is current, relevant and accessible. While this includes a legislative directive to make use of the internet, the Police should not rely on this as the sole form of communication. With an estimated 25 million internet users in India,¹¹ the Police will need to publish this information in other ways accessible for the large majority of the public. This can take the form of notice boards, newspapers, public announcements and media broadcasts.¹²

The RTI Act also establishes an Information Commission with administrative powers to ensure and monitor compliance with the Act and hear appeals.¹³ In the interests of compliance with proactive disclosure, the Information Commission has the power to receive from a public authority an annual compliance report in relation to the proactive disclosure obligations. This reporting mechanism will technically make the Police answerable to the Information Commission for all acts of commission and omission with respect to proactive disclosure.¹⁴

3.2 Appointment of Public Information Officers

The right to information is an essential public service and one that enhances the service role of the Police and the police-public interface. The appointment of Public Information Officers (PIOs) is therefore a small step for a public authority with a high level of interaction with the public such as the Police. PIOs deal with public requests for information and are required to render reasonable assistance to those making requests.¹⁵ The Police should by now have designated their PIOs. This requires that existing officers be appointed to deal with information requests, in addition to their regular duties. The Police must appoint as many PIOs in all administrative units or offices under it as are necessary to provide information to persons requesting information. In addition to PIOs, Assistant Public Information Officers (APIOs) are to be appointed at sub-divisional or sub-district levels. APIOs receive applications (and appeals) from citizens for information and forward these onto the PIOs.

3.3 Requesting Information Under the RTI Act

¹¹ BBC Country Profile: India, http://news.bbc.co.uk/1/hi/world/south_asia/country_profiles/1154019.stm

¹² Right to Information Act 2005, ss 4(3) & 4(4).

¹³ See Right to Information Act 2005, Chapter V.

¹⁴ Right to Information Act 2005, s 19(8)(a)(vi).

¹⁵ Right to Information Act 2005, s 5. Section 5 covers the appointment and responsibilities of the PIOs and APIOs.

Under the RTI Act, a citizen may request information in writing or through electronic means. The request may be made in English, Hindi, or the main language of the area in which the application is being made.¹⁶ There is currently no standard format for information requests. The only details required by law are the particulars of the information being sought and sufficient personal details necessary for contacting the person making the application. An application for information costs Rs10.¹⁷ Importantly, an applicant making a request for information does not need to give any reason for requesting the information.

The PIO must then either:¹⁸

- provide the information as “expeditiously as possible” (within thirty days of receiving the request) upon the receipt of any prescribed fee.¹⁹ The information should generally be in the form requested unless it disproportionately diverts the resources of the Police or compromises the safety or preservation of the record in question; or
- reject the request for any of the listed exemptions (discussed below). In this case, the PIO must state the reasons for rejecting the request and give details as to the procedure for appealing a negative decision.

The RTI Act contains two levels of redress for a dissatisfied applicant.²⁰ Firstly, each public authority must have an internal Departmental Appellate Authority (DAA) to hear any appeal against a decision from the PIO. Secondly, the Information Commission (IC) has a broad range of powers to oversee the PIOs and DAAs. These include the power to:

- appoint a PIO in a public authority where none exists;
- order the public authority to provide access to the information requested by an applicant;
- order the public authority to make changes to its maintenance and management of information to facilitate the right to information;
- look into complaints regarding PIOs, particularly where an applicant claims his/her rights under the RTI Act have been violated. For example, the Information Commission can fine penalise an APIO or PIO with monetary fines ranging from Rs. 250 per day up to a maximum of Rs. 25,000. Further, the IC can recommend disciplinary action against an erring APIO/PIO and can order the public authority to pay compensation for any loss incurred by a citizen requesting information.

A citizen may also request information regarding the life or liberty of another person. This primarily relates to situations where someone is arrested and is not then produced in court within 24 hours as provided by the Constitution. In this context, immediate family or other concerned parties have a right to information regarding that person. This is particularly relevant to the Police, and where such a request is made the information sought must be provided within 48 hours.²¹ Further guidelines from the Government are

¹⁶ Right to Information Act 2005, s 6.

¹⁷ Right to Information (Regulation of Fee and Cost) Rules 2005, r 3..

¹⁸ Right to Information Act 2005, s 7(1).

¹⁹ Fees cannot be charged to those below the poverty line. Further, no fee can be charged where the time limits are exceeded. Fees are Rs2 per photocopied page and Rs50 for a CD or floppy disk.

²⁰ See Right to Information Act 2005, Chapter V.

²¹ Right to Information Act 2005, s 7(1).

needed to determine how to treat such information requests with due diligence and urgency.

3.4 Exemptions Under the RTI Act

Although the principle of maximum disclosure underpins the right to information, it is recognised that this is not absolute. Not all information can be disclosed where it falls under particular exemptions provided by law. The RTI Act contains a list of exemptions from disclosure of information.²² These exemptions include requests that prejudicially affect the sovereignty and security of India, information that any court of law has expressly forbidden to be published, and personal information that amounts to an invasion of privacy that has no relationship to any public activity or interest. Currently these exemptions are open to differing interpretations. Ideally, the Central Government will produce a set of guidelines explaining the exemptions and giving practical examples to assist interpretation and ensure consistency across India. This paper therefore aims to support Police officials initially in applying the relevant exemptions consistently. It should be noted that all the exemptions are subject to a public interest override, discussed below.

Two main exemptions are relevant to the context of the Police. In the wording of the Act itself:²³

- there shall be no obligation to give any citizen,-
- information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes; and
 - information which would impede the process of investigation or apprehension or prosecution of offenders.

Thus, information may be withheld if that information would:

- **endanger the life or physical safety of any person:** The Police will likely have a broad discretion under this exemption. One Police function is to maintain the safety and security of the public, and information that compromises this function will not likely be disclosed. Generally, only the public interest will override this provision (as discussed below);
- **identify the source of information or assistance given in confidence for law enforcement or security purposes:** This exemption suggests that it applies to information received by the Police from another person. In other words, it does not apply to information generated by the Police itself. It also applies only to information obtained for law enforcement or security purposes. Again, this exemption may be used for the protection of any person, for example, victims of crime or informants; confidentiality in such cases may be obvious from the circumstances, although this will need to be determined on a case-by-case basis. This can also protect accused persons, where an investigation may proceed without reference to the person under investigation until there is or is not sufficient evidence to lay charges. However, while this is seen to be important to safeguard the flow of information from the public, it may not always be practical.

²² Right to Information Act 2005, s 8.

²³ Right to Information Act 2005, ss 8(1)(g) & 8(1)(h).

People providing information to the Police should be aware that the information used for an investigation may need testing against other informants, witnesses, or accused. It may simply not be feasible to conduct an investigation on the basis of anonymity. Further, the Police must be aware that confidentiality can be subject to certain conditions such as procedural fairness (e.g., where witness evidence must be tested); a more effective investigation (e.g., details of the crime may be publicised in efforts to identify perpetrators, victims, and witnesses); and allowing satisfactory reasons to the complainant/victim for the outcome of an investigation,²⁴

- **impede the process of an investigation:** The success of investigations often depends upon Police not disclosing information prematurely. In deciding whether information comes under this category, the Police must weigh up the particular circumstances of each case. This may include balancing several competing interests, such as keeping the complainant fairly informed of the process and outcome of an investigation; maintaining accountability within the Police for the effective discharge of its functions; the need to protect the interests of parties involved in the investigation; and the need to safeguard the flow of information from the public. This balance will vary from case to case, depending on these (and other) factors and the stage the investigation is at. Further, this exemption should apply to information held for the purposes of specific investigations. Therefore, it should not become a blanket exemption to cover broad aspects of investigation. For example, the exemption will not apply to general information about the process of an investigation, such as general procedures and policies on how investigations should be carried out. It should also be noted that this exemption should apply only to *lawful* investigations. In other words, the Police must be able to show a legal duty to conduct the investigation,²⁵ or
- **impede the apprehension or prosecution of offenders:** It is important that information relating to the targets of investigation and accused *etc* is not made public ahead of time. This is not only to protect the process of investigation and apprehension of offenders, but also to protect the danger of “suspects” becoming “perpetrators” in the public arena before the Police have finished an investigation, and therefore compromising the chances of a fair trial.

The National Human Rights Commission (NHRC) has issued a set of guidelines for the Police on police-public relations that are relevant to this context. In particular, they set out guidelines for the release of information to a complainant while there is an ongoing

²⁴ See UK Information Commissioner (2004) “Guidance Note: Applying Exemption re Information Given in Confidence” at http://www.humanrightsinitiative.org/programs/ai/rti/implementation/applying_law/guidance_note_applying_exemption_info_confidence.pdf; Queensland Information Commissioner (2001) “Information Sheet on Exempting Identities of Complainants and Information-Providers” at http://www.humanrightsinitiative.org/programs/ai/rti/implementation/applying_law/qld_identities_of_complainants.pdf; and Ombudsman’s Practice Guidelines (New Zealand), “Confidentiality” para 4.3, at <http://www.ombudsmen.govt.nz/guideB43.htm#Confidentiality>

²⁵ See UK Information Commissioner (2004) “Guidance Note: Applying Exemption re Investigations” at http://www.humanrightsinitiative.org/programs/ai/rti/implementation/applying_law/guidance_note_applying_exemption_investigation.pdf; Scottish Information Commissioner (2002) “Guidance Note: Applying Exemption re Investigations” at http://www.humanrightsinitiative.org/programs/ai/rti/implementation/applying_law/guidance_note_applying_exemption_law_enforcement_scot.pdf; and Ombudsman’s Practice Guidelines (New Zealand), “Maintenance of the Law” para 3(c), at [http://www.ombudsmen.govt.nz/guideB3.htm#\(c\)](http://www.ombudsmen.govt.nz/guideB3.htm#(c)).

investigation. As mentioned above, the complainant must be kept fairly informed of the progress of an investigation and provided with reasons for why a complaint is not registered or delays in the investigation process.²⁶

The purpose of the exemptions with respect to the Police is therefore safeguarding those aspects of policing that require certain levels of discretion. Implemented effectively, the exemptions should allow the Police to create and maintain public confidence with respect to the way information is handled both in its dissemination *and* protection.

3.5 *Public Interest Override*

The above exemptions however cannot be read in isolation. The exemptions themselves are subject to a “public interest override”: a public authority may allow access to information if public interest in disclosure outweighs the harm to the protected interests.²⁷ Public interest may be described as something for the good order of society and the well being of its members.²⁸ The Act itself does not define public interest and again this is an aspect of the right to information that would benefit from guidelines from the Central Government. However, this ambiguity allows a flexibility to apply the concept to differing factual situations:²⁹

There cannot be any hard-and-fast rule to determine what is in the public interest. The circumstances in each case would determine whether government action was taken in public interest or was taken to uphold probity in governance ... Therefore the principle of governance has to be tested on the touchstone of justice, equity and fair play and if the decision is not based on justice, equity and fair play and has taken into consideration other matters, [such as achieving] popular accolade, that decision cannot be allowed to operate.

It is clear that the public interest is not concerned with the interests of private individuals nor simply where something is newsworthy. This is the distinction between what is *of* interest to the public and what is *in* the interest of the public. Some relevant considerations in determining what lies in the public interest for the Police include:³⁰

- whether disclosure would enhance scrutiny of the decision-making process, improving accountability and transparency;
- whether disclosure may in fact contribute to the enforcement of law, including the prevention of crime or apprehension of offenders;

²⁶ See M Tiwana, “Human Rights and Policing: Landmark Supreme Court Decisions & National Human Rights Commission Guidelines” (CHRI, 2005) 39-40, at http://www.humanrightsinitiative.org/publications/hrc/humanrights_policing.pdf.

²⁷ Right to Information Act 2005, s 8(2).

²⁸ See Western Australia Information Commissioner, “Freedom of Information: Policy and Practice” (November 1996), 73-5, at http://www.humanrightsinitiative.org/programs/ai/rti/implementation/applying_law/wa_practitioners_manual.pdf.

²⁹ *Onkar Lal Bajaj and others v Union of India and another* (2003) 2 SCC 673.

³⁰ See Cook, M, “Balancing the Public Interest: Applying the public interest test to exemptions in the UK Freedom of Information Act 2000” (August, 2003) at http://www.humanrightsinitiative.org/programs/ai/rti/implementation/applying_law/public_interest_uk_academic_paper.pdf.

- whether disclosure keeps the public adequately informed of any danger to public health and safety; and
- whether disclosure would ensure fairness in future dealings between the Police and the public.

3.6 *Partial Disclosure*

Where information requested contains some information that is exempted but not all, the PIO has the power to order partial disclosure.³¹ In this case, a PIO may release information once the exempted information has been removed. For example, a PIO may release information relating to a particular investigation as that information relates to the norms of policing while withholding specific exempted information.

4.0 **Issues Arising from the Application of the RTI Act to the Police**

The RTI Act signifies a major change in emphasis to information in India. It recognises the failings of continuing under a colonial style of governance and the detrimental effects that has on democracy. The Police is arguably the most visible organ of government still operating under systems put in place by the former colonial rulers. The Police Act of 1861 remains the primary piece of legislation nearly 150 years on, and more than 50 years since independence. The Police Act still governs the structure and working of the 58 State Police Forces and is applicable in most parts of the country. It establishes the role of the police as mere law enforcement, and is silent as to a more appropriate service-oriented role of which enforcement is only a part. As such, the Police as an institution remains generally mistrusted by the public it is sworn to serve, working in a vacuum of a lack of goodwill and cooperation. The RTI Act has the potential to reform these negative aspects of a Police stuck in the past. However, the implementation of the right to information will not be without some conflict.

4.1 *Conflicting Legislation / Rules*

Existing legislation and rules of the Police often prevent the disclosure of information to the public. However, all such legislation was drawn up before the RTI Act and must now be reviewed in light of the new law. The RTI Act has an overriding effect and applies notwithstanding any other inconsistent legislation.

- **Indian Evidence Act 1872:** There are three important provisions relating to the disclosure of information under this Act:³² evidence cannot be derived from unofficial public documents relating to any affairs of State, which includes information held by the police, without the permission of the head of the relevant department; no public officer shall be compelled to disclose communications made to him/her in official confidence, when s/he considers that the public interests would suffer by the disclosure; and no police officer can be compelled to reveal any sources of information relating to the commission of any offence. At face value, these provisions can be easily reconciled with the RTI Act. The important point for the Police to note is that the criteria for determining whether information can be excluded under the Evidence Act is now derived from the

³¹ Right to Information Act 2005, s 9.

³² Indian Evidence Act 1872, ss 123-5.

exemptions under the RTI Act. For example, the revealing of sources of information is now subject to the public interest override.

- **Official Secrets Act 1923:** This is a wide-reaching Act intended to protect the sovereignty, integrity and security of India. Again inherited from the colonial era, it leaves open what information becomes “secret” to the discretion of those in power. Thus, under this Act, Police may not divulge “official information” that is “secret” and the PIOs continue to operate under its purview.³³ However, as much as this conflicts with the RTI Act, it would be ideal for the Government to amend the oath of secrecy to bring it in line with the imperative of transparency required under the right to information. For clarity: the RTI Act applies despite anything inconsistent contained in the Official Secrets Act.
- **All India Services (Conduct) Rules 1968:** These rules set out the conduct expectations for the Indian Police Service, as stipulated by the Government. It sets out several provisions restricting Service members from the “unauthorised communication of official documents.”³⁴ Again, the rationale underlying the restriction of information has changed under the RTI Act to a presumption that the public has a right to information. This presumption must now govern the interpretation of rules restricting the flow of information.
- **Code of Criminal Procedure 1973:** The Criminal Code mostly relates to the procedural aspect of police work, and thus contains some important provisions relating to information gathered by police in the course of their duties. It sets out the procedures and norms relating to investigations, which are important when interpreting the investigation exemption relevant to the Police. Much of the information generated with respect to investigations must now be considered in light of the overriding effect of the RTI Act. Such information may well be accessible under the RTI Act:
 - All information relating to a cognizable offence must be reduced to writing and signed by the person giving such information, a copy of which must be given to the informant (First Information Report – FIR). Information relating to non-cognizable offences must be entered into the appropriate book and referred to the Magistrate;³⁵
 - A police officer of appropriate rank may proceed to the spot of the crime and investigate the facts and circumstances of the case, in the interest of discovering and arresting the offender. The informant must be notified of any deviations from the normal procedures of investigations;³⁶
 - The power of investigation includes the power to require attendance of witnesses acquainted with the facts and circumstances of the case. Any statements made to police by witnesses may be reduced to writing, but must not be signed. Such written statements may not be used as evidence at any hearing or trial, except by the accused with the permission of the Court;³⁷
 - An officer in charge of a police station (or designated subordinate) may search any place within the area of the police station where there are

³³ Official Secrets Act 1923, s 5.

³⁴ All India Service (Conduct) Rules 1968, r 9.

³⁵ Code of Criminal Procedure 1973, s 154.

³⁶ Ibid, s 157.

³⁷ Ibid, ss 160-2.

reasonable grounds for believing such a search is necessary. The reasons for a search must be recorded in writing;³⁸

- Where an accused is detained, and the investigation cannot be completed within 24 hours, the police must provide a copy of all relevant diary entries to the Magistrate, who then has the discretion to authorise continued detention;³⁹
 - Every police officer making an investigation must record the day-to-day details of the investigation in a case diary. These may be used as an aid to an inquiry or trial, but not as evidence before the Court. The accused is not entitled to see the diary merely if it is referred to by the Court, but may use it where the investigating officer uses it as a memory aid or if the Court uses it to contradict evidence of the investigating officer;⁴⁰
 - The details of complete investigations must be forwarded as a report to the Magistrate. Where an accused is then committed for trial, the police officer must include all relevant documents and statements relied on during the course of the investigation. These may then be passed onto the accused at the discretion of the police officer, who may also request the Magistrate to exclude parts that are not essential in the interest of justice and inexpedient in the public interest.⁴¹ However, at the commencement of proceedings before the Magistrate, the accused must be furnished with copies of the police report; the FIR; witness statements relied on by the police, with the right to seek permission to see any parts excluded by the police officer; any confessions or statements recorded; and any other relevant document submitted by the police;⁴²
 - Importantly, an arrested person has the right to know the full particulars of the offence for which they are arrested and the arresting officer must wear a nametag with his/her designation.⁴³ All arrests without warrant must be reported to the District Magistrate.⁴⁴
- **Madhya Pradesh Police Regulations 1979 (an example):** The State Police Manuals, Rules and Regulations implement the Criminal Code at the state level and also contain procedures Police follow. They are an important source regulating Police conduct and now need to be brought into line with the RTI Act. A good example of the potential conflict in the treatment of information is found in the MP Police Regulations. These Regulations set out the numerous diaries and registers kept by the Police and the purpose of each. Importantly in this context, the Regulations also provide direction as to the dissemination of the information contained in the registers, stipulating that no document or record belonging to or in the custody of the police shall be furnished to any private individual without a court order.⁴⁵ Further, all registers maintained by the police, apart from the FIR, are designated “unpublished official records relating to affairs of State.” The registers are therefore privileged documents covered by the Indian Evidence Act 1872, and no person can give any evidence derived from them without the

³⁸ Ibid, s 165.

³⁹ Ibid, s 167.

⁴⁰ Ibid, s 172.

⁴¹ Ibid, s 173.

⁴² Ibid, s 207.

⁴³ Ibid, s 50.

⁴⁴ Ibid, s 58.

⁴⁵ Madhya Pradesh Police Regulations 1979, r 706.

discretionary permission of the Minister-in-charge or the Secretary of the Home Department. Finally, the S.P. must ensure that no extracts of registers are given to private parties.⁴⁶ However, the Rules *etc* of the Police now need to be either read subject to the provisions of the RTI Act or amended to achieve consistency with the RTI Act.

- **Karnataka Police Manual (an example):** This manual also sets out extensive instructions on the contents of registers maintained by the Police. The number and details of each diary are too many to set out in this paper. As with other Police Manuals, it manages the internal flow of information with little direction as to its wider dissemination. For example, the Station House Diary contains the details of the work and movements of the Station House Officer and the members of the general detachment and traffic detachment, including descriptions of all FIRs. Administrative matters relating to members of other detachments such as grant of leave, issue of passports and disbursement of pay are also entered in the diary.⁴⁷ Another example is the Detachment Diary, which describes the nature of section duties undertaken on a day-to-day basis.⁴⁸ Both these diaries contain important information about internal Police procedures and external interaction with the public but there is no direction as to whether the public has a right to access any part of this information. The Karnataka Police also maintains a continuous history of crime statistics in order to deal with crimes effectively but designates these statistics as “confidential.” However, it does publish general statistics without the revealing the investigative side of those statistics such as personal information. Whether a person may be able to access a more detailed description of statistics under the RTI Act such as contained in the Annual Crime Review, which is intended for the benefit of superior officers,⁴⁹ remains to be seen. Again, the case diary is designated an unpublished official record.⁵⁰

The diaries kept at Police Stations are likely to be an area of difficulty under the RTI Act. There is high potential for the Police to view public access to this information as unnecessarily interfering with the operational management of police work. However, under the RTI Act only those diaries (or parts thereof) that fall under one of the exemptions can be withheld from the public. A distinction may therefore be drawn between content held in, for example, the case diaries that record individual police officers views and opinions of ongoing investigations and content of the general diaries that record administrative aspects of police work.

An additional point to note with respect to diaries maintained by the Police is that many of them are destroyed after a certain amount of time, often less than the 20-year period in the RTI Act. Therefore, if a record has been destroyed legally, a PIO cannot be penalised for this; the PIO cannot create a record in order to meet a request. However, the time limitation for seeking information under the RTI Act is 20 years.⁵¹ Therefore, the

⁴⁶ Ibid, rr 707 & 1092(i).

⁴⁷ Karnataka Police Manual, r 970.

⁴⁸ Ibid, r 1092(ii).

⁴⁹ The Annual Crime Review includes details on fluctuations of crime and the ways and means of investigation. See Ibid, r 1035.

⁵⁰ Ibid, Ch XXXIV.

⁵¹ Right to Information Act 2005, s 8(3). Generally, all information relating to any occurrence, event or matter occurring 20 years before the date of an application must be provided.

Police should consider reviewing current records management in accordance with the proactive disclosure requirements discussed above.

The Police already has a substantial flow of information within the ranks. Generally, the Police controls much of this information internally, with little legislative direction as to its wider dissemination. This fits with the inherited rationale of the Police as a mere law enforcement agency. Information flow is internal, generally passed on to superiors in a hierarchical fashion: information flows upwards and not outwards. The RTI Act now imposes an obligation on Police to reassess the control of information. To be explicit: the RTI Act now governs information covered by the Police Manuals and Regulations. As such, this information can only be excluded from the right to information if it is brought under one of the exemptions discussed above, subject to a public interest test.

4.2 Extra Administrative Duties

Some police have expressed concern over the extra administrative duties under the RTI Act. There is a perception that the RTI Act will lead to more police time being spent on gathering information rather than actual police administrative work. Such concerns must be addressed for the successful implementation of the RTI Act. Firstly, most, if not all, of the information covered by the RTI Act is already dealt with by the Police. Information held by the Police should already be easily accessible by the PIOs. Secondly, previous experience indicates that offices are not flooded with applications. PIOs are generally able to carry on with their usual duties. A public authority may also choose to have a dedicated PIO in circumstances where there are numerous applications. This recognises the fundamental importance of the right to information; the Police is already well equipped to deal with the public and the provision of information has potential to improve this police-public interface. Thirdly, the best way to minimise information requests is to proactively disclose as much information as possible. Much information held by the Police will come under the proactive disclosure obligations. Release of this information in accessible form will demystify police procedures, reducing the need for information requests.

4.3 Police Transfers

A good example of the use of RTI legislation is found in Maharashtra, where an advocate used the Maharashtra RTI Act to reveal massive transfers of police personnel in the state of Maharashtra.⁵² The information released by the offices of the Mumbai Police Commissioner in response to this right to information application substantiated widely held suspicions of political interference in police transfers. It revealed that in one year, the Police Chief received 143 requests for transfers from politicians recommending “favourites” to different posts. These transfers were nearly always away from conflict zones or from poor postings into areas considered more lucrative. Since this information went public, warnings were issued to the police officers involved, and requests for transfers have stopped coming to the Mumbai Police Commissioner.

This example demonstrates the effectiveness of the right to information in addressing public concerns relating to the Police. In Maharashtra, political interference in police transfers was uncovered; the police department there can now move on with more confidence and credibility in the absence of such political scheming.

⁵² See for example, <http://cities.expressindia.com/fullstory.php?newsid=101179>.

5.0 Conclusion

Traditionally, the Police has operated under the strictures of secrecy inherited from colonial times. This lack of transparency leads to suspicion of corruption even where it is absent, creating a Police force lacking confidence and credibility. There is currently much recognition of these shortcomings of the Police, particularly with respect to corruption and abuse of powers. There has been much talk about the need to replace the 1861 Police Act and promote police reforms through accountability and transparency mechanisms. These are all important directions the Police need to take in a democratic society. Indeed, it is difficult to see how a society can describe itself as democratic in the absence of democratic policing. However, to date such reforms have remained in the public forum of debate where there are many good intentions and little obvious progress. The Prime Minister has given the momentum some much-needed political impetus, but the colonial legislation remains on the books.

Seemingly quiet in the background of this context, the active implementation of the RTI Act has the potential to meet much of these aspirations. It can be used as a tool for police reforms, both from within the Police and from citizens exercising their rights under the RTI Act. This is an Act that promotes a functioning democracy with accountability and transparency of those in power, including and especially the Police. The greater flow of information from the Police increases community participation with the Police while reducing community scepticism toward the Police. This in turn promotes a confident Police force credible in the eyes of the public it serves.

The promotion of a good police-public relationship is imperative. It must be strengthened in order to bring about public involvement and cooperation in the continuing day-to-day functioning of the police. Perhaps most importantly, the RTI Act has the potential to reform the Police from within the ranks. The reach of the RTI Act means the emphasis of Policing is now squarely on a more appropriate public service role, especially with respect to Police procedures and information flow. This has the potential to reform Police culture from one of a secretive branch of the executive to an open service for “we, the people.”

Appendix: Making an Application Under the Right to Information Act 2005

A citizen may make an application under the RTI Act in writing or in electronic form. This allows applications to be submitted in person, by post, facsimile, or email. A number of details need to be included when submitting an application under the RTI Act to ensure the application is processed:

1. It is important to identify the public authority from where the information is being requested and the PIO receiving the application. Applicants should therefore begin by ensuring the correct name and address of the public authority and the PIO receiving the application is included.
2. Applicants must ensure that they explicitly state that they are requesting information “under the Right to Information Act 2005.” This triggers the legal process and obligations under the RTI Act.
3. Applicants must be specific in what information is being requested. The details of what information is being requested must be sufficient enough for the PIO to accurately identify that information. Applicants should therefore specify what information is being sought, what format that information is held in, and what date the information was recorded. The more details listed, the more chance the information can be found.
4. Applicants must include the date of the application. This is important in terms of the time requirements under the RTI Act.
5. Sufficient contact details are required for the PIO to contact the applicant. Generally, applicants should include their name and address for correspondence, including either or all of a postal address, email address, or phone number.
6. Each application should include the appropriate application fee. In the case of first instance applications, the fee is 10Rs. Proof of payment should be included in an application.